

**IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MASSACHUSETTS**

<b>PETER J. MILLER, CLIFFORD HOYT, and CAMBRIDGE RESEARCH AND INSTRUMENTATION, INC.,</b>  <b>Plaintiffs,</b>  <b>v.</b>  <b>PATRICK TREADO and CHEMIMAGE CORP.,</b>  <b>Defendants</b>	<b>CIVIL ACTION NO. 05 10367 RWZ</b>
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**DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR LEAVE TO FILE A  
REPLY BRIEF IN SUPPORT OF THEIR MOTION FOR LEAVE TO FILE AN  
AMENDED COMPLAINT**

Plaintiffs seek leave to file a reply brief in support of their Motion for Leave to File an Amended Complaint (Docket Entry No. 40). Plaintiffs contend that a reply is warranted because Defendants' opposition (Docket Entry No. 55) "raises numerous new issues, and contains mistakes of law and fact which plaintiffs would like to correct by filing a Reply brief." (Plaintiffs' Motion for Leave to File Reply Brief, second page). Defendants do not object to Plaintiffs filing a reply brief, provided the reply is not simply an attempt to have the last word on issues that Defendants could and should have addressed in their opening brief.

To the extent that Plaintiffs seek to respond to purported "mistakes of law and fact" in Defendants' opposition, Defendants do not object. However, Defendants do object to Plaintiffs using a reply brief as a Trojan horse to advance arguments that could and should have been made in their original moving papers.

Of particular concern is the issue of good cause for granting leave to amend. In their original moving papers, Plaintiffs acknowledge, as they must, that their motion is governed by the stringent “good cause” standard of Fed. R. Civ. P. 16(b). (Plaintiffs’ Memorandum at 2). Plaintiffs were not only well aware of their burden to show good cause, but they had plenty of time to develop arguments to support their required showing (particularly in light of their prolonged delay in seeking leave to amend their complaint). Nonetheless, as discussed in detail in Defendants’ opposition, Plaintiffs’ moving papers are devoid of any showing of good cause.

Plaintiffs have had their chance to demonstrate “good cause,” but have failed. They should not now be allowed to have the last word by making arguments in a reply brief that should have been made in their original moving brief, to the prejudice of Defendants.

PATRICK TREADO AND CHEMIMAGE CORP.

By their attorneys,

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July 5, 2006

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of Defendants' Response to Plaintiff's Motion For Leave to File A Reply Brief filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on July 5, 2006

/s/ Anthony J. Fitzpatrick  
Anthony J. Fitzpatrick